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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

PIERRE ESTALIN SAINT-FLEUR, Plaintiff and Respondent, v. COUNTY OF FRESNO et al., Defendants and Appellants.	F075060 (Super. Ct. No. 13CECG00838) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Donald S. Black, Judge.

Daniel C. Cederborg, County Counsel and Scott C. Hawkins, Deputy County Counsel, for Defendants and Appellants.

Law Office of Amy R. Lovegren-Tipton and Amy R. Lovegren-Tipton for Plaintiff and Respondent.

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In this action under the California Public Records Act (Gov. Code, § 6250 et seq.,[1] the CPRA), the sole issue on appeal is whether the trial court erred in determining that plaintiff, Pierre Estalin Saint-Fleur, was the prevailing party entitled to an award of attorney fees and costs. Plaintiff made a written request to defendant, County of Fresno (the County), seeking the disclosure of public records relating to an investigation of plaintiff's billing practices as a licensed mental health clinician while employed by the County.[2] In response to plaintiff's request, the County refused to disclose most of the requested records on the ground the withheld documents were exempt from disclosure as private personnel records under section 6254, subdivision (c). Plaintiff filed a complaint under the CPRA to determine whether the County's refusal was justified, and ultimately the trial court ordered the County to produce the public records at issue. Plaintiff then moved for an award of his attorney fees and costs under section 6259 subdivision (d) as the prevailing party. The County opposed the motion, asserting that plaintiff did not prevail because the County had previously delivered copies of discovery documents to plaintiff's counsel from a prior litigation which contained the same records; therefore, nothing was gained by plaintiff's CPRA complaint. In its order, the trial court disagreed with the County's argument and found that plaintiff was the prevailing party entitled to an award of attorney fees. The County appeals from that order. We conclude the trial court's prevailing party determination was adequately supported by substantial evidence in the record. Accordingly, the order of the trial court is affirmed.

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[1] Unless otherwise indicated, all further statutory references are to the Government Code.

[2] Although individual employees or public officials of the County were named as additional defendants in plaintiff's action, the CPRA attorney fee statute concerns the obligations of the County only. (§ 6259, subd. (d).) For convenience and ease of reference, our discussion refers only to the County rather than to defendants collectively.

FACTS AND PROCEDURAL HISTORY

Plaintiff's Employment and Events Preceding this Litigation

Plaintiff was employed by the County from 1990 to 2009 in the Department of Children and Family Services. From 1991 to 2009, plaintiff's position with the County was that of a licensed mental health clinician. In 2004, plaintiff sought, and was granted, military leave to serve with the Army National Guard overseas. Upon his return in 2008, plaintiff was reinstated by the County. However, after his return to employment, plaintiff was allegedly targeted by his new supervisor, Deputy Director Donna Taylor (Taylor), who purportedly treated plaintiff unfairly or harassed plaintiff. The alleged harassment included accusations by Taylor that plaintiff had engaged in fraudulent or improper billing practices. An investigation into plaintiff's billing practices was conducted, and the investigation purportedly found 70 claims for case management services billed by plaintiff that were overstated, which resulted in a $3,681.45 refund to Medi-Cal. Plaintiff was not given an opportunity to respond to the allegations of wrongdoing or overbilling, and plaintiff believed the allegations were entirely unfounded.

According to plaintiff, other forms of harassment and demeaning treatment by Taylor persisted, which created an intolerable work environment that eventually led plaintiff to take an early retirement from the County in 2009. However, in response to the alleged conduct by Taylor, plaintiff filed an action in the U.S. District Court on January 4, 2010, alleging that the County violated plaintiff's federal rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. § 4301 et seq.). The U.S. District Court action, sometimes referred to as the USERRA case, was settled by the parties in December 2010.

In 2012, to make sure he would be able to obtain security clearance regarding future employment opportunities, plaintiff believed he had to have access to the County's records concerning the investigation of fraudulent or improper billing practices.

Accordingly, beginning in 2012, plaintiff made written requests to obtain copies of the investigation files relating to plaintiff's billing practices. However, the County refused to provide access to most of the requested records. In its written response to plaintiff by letter of March 13, 2012, the County enclosed two documents, but stated that the balance of the file would not be provided: "The remaining portions of that investigation file are not subject to release as they fall within the exception provided in Government Code Section 6254(c) for 'personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.' The withheld documents are handwritten interview notes, a signed Weingarten Rights Form, emails scheduling an investigative interview, summations of witness statements and Ms. Jaime's investigatory notes. These documents all reveal the identity of an individual subject to disciplinary investigation and/or consumers of mental health services." A subsequent letter from a Deputy County Counsel to plaintiff's counsel, dated June 21, 2012, reiterated the County's position that the withheld investigation records fell within the exception to the Public Records Act found at section 6254, subdivision (c).

Plaintiff's Initial Pleadings and Motion to Vacate Judgment

On March 18, 2013, plaintiff filed his original complaint against the County and certain named employees of the County, alleging among other things that the County improperly refused to provide plaintiff with complete copies of the records pertaining to him. On July 9, 2013, plaintiff filed a first amended complaint. Plaintiff's allegations did not yet include a CPRA cause of action or any other statutory basis for relief. The County demurred, and the demurrer was sustained with leave to amend. However, plaintiff failed to file a second amended complaint within the time allowed by the trial court. Upon the County's subsequent request for dismissal of the action and for entry of a defense judgment, the trial court entered judgment in favor of the County and against plaintiff.

Plaintiff retained new counsel and, on January 3, 2014, filed a motion to vacate judgment under Code of Civil Procedure section 473. The motion was based on the ground of excusable neglect because plaintiff's prior counsel had effectively abandoned plaintiff at the critical time in which an amended pleading needed to be filed. In conjunction with his application for relief under Code of Civil Procedure section 473, plaintiff filed a copy of the proposed second amended complaint. The proposed second amended complaint included claims that the County failed to provide plaintiff access to his complete personnel file in violation of section 31011 and Labor Code section 1198.5 (the first cause of action), *and* that the County improperly withheld documents which should have been released as public records in response to plaintiff's requests in violation of the CPRA (the second cause of action).

County Counsel's E-mails Suggest Plaintiff Already Possessed the Records

In January of 2014, after plaintiff's motion to vacate judgment was filed, and in reaction to plaintiff's proposed second amended complaint, Deputy County Counsel Michael Linden e-mailed plaintiff's new counsel, Amy Lovegren-Tipton, concerning plaintiff's claims. On January 17, 2014, Linden stated in his e-mail that he "had a conversation with attorney Sloan Simmons from Lozano Smith in Sacramento, who represented the County in Mr. Saint-Fleur's USERRA case," and attorney Simmons's recollection was "that your client's personnel files, as well as the investigation file relating to the Medi-Cal overbilling issue, were produced in discovery" in that case back in 2010. Linden suggested that plaintiff's counsel should contact plaintiff's former attorney of record in the district court case "to confirm that these documents were produced."

Plaintiff's counsel, Lovegren-Tipton, responded by e-mail on January 17, 2014, asking for definite confirmation that the referenced discovery documents "represent all documents which contain any and all information relating to: (a) the allegations of fraud

as to Saint-Fleur's billing; (b) the investigation into the fraud allegations; (c) the results of the investigation into the allegations; (d) Saint-Fleur's employment with County of Fresno; and (e) communications with others regarding Saint-Fleur's employment with the County of Fresno, including any matters relating to the fraud allegations." The e-mail went on to express concern whether the County would comply with the requirements of Labor Code section 1198.5, the basis for the personnel file cause of action in the proposed second amended complaint, and it concluded with a request that the County confirm "there are no other documents or files that relate in any way to Saint-Fleur's employment with the County of Fresno."

Deputy County Counsel Linden replied by e-mail later the same day, on January 17, 2014, noting that since he was not counsel of record in the USERRA case he did not know if "all" documents relating to plaintiff's employment were produced, but he added that what matters is "whether the relevant documents were produced." In that regard, Linden noted plaintiff "alleges that he was denied access to his personnel files, and thus 'unable to proactively discuss the investigation and alleged evidence with potential employers,' " but the discovery documents provided to plaintiff in the USERRA case apparently included the personnel and investigation files that plaintiff seeks. Linden closed his e-mail by stating as follows: "To assist you in your investigation, I have requested copies of the discovery files. However, you also can contact Mr. Saint-Fleur's former counsel and find out what is in his files."

On January 24, 2014, Deputy County Counsel Linden sent this e-mail message to plaintiff's counsel: "I am in receipt of the discovery responses and produced documents from the USERRA case. My plan is to drop by your office this afternoon and provide a copy of what I received.… I believe you will find that Mr. Saint-Fleur has always had access to the records because they were produced to his counsel."

On April 21, 2014, plaintiff made a formal written request to Beth Bandy, Director of Personnel Services for the County, seeking a copy of plaintiff's entire personnel file pursuant to the provisions of Labor Code section 1198.5. The request relates to plaintiff's first cause of action under Labor Code section 1198.5, not the CPRA cause of action, but it also sought some records relating to the investigation of overbilling to the extent they were part of plaintiff's personnel file. In response, Deputy County Counsel Linden agreed to "look into whether [there] may be any records that your client … did not receive through the discovery process." On May 20, 2014, Linden responded by letter that "I am not aware of any documents in existence at the County relevant to your client's concerns that were not produced" in the USERRA case.

Defendant's Opposition to Motion to Vacate Judgment

On February 5, 2014, about two weeks after delivering copies of the 2010 USERRA discovery responses to plaintiff's counsel, the County filed its opposition to plaintiff's motion to vacate judgment. In its opposition, the County argued that plaintiff's proposed second amended complaint did not contain a viable cause of action. However, nowhere in the County's opposition papers, signed by Deputy County Counsel Linden, did it claim that the CPRA documents requested by plaintiff had already been provided. In fact, the opposition made no mention of the 2010 USERRA discovery responses that Deputy County Counsel Linden had dropped off only two weeks earlier. Instead, the County's opposition argued the proposed CPRA cause of action was without merit because the CPRA "exempts from disclosure '*Personnel*, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.' Gov. Code § 6254, subd. (c) (Italics added)."

On June 6, 2014, the trial court granted plaintiff's motion to vacate judgment and for leave to file a second amended complaint. On June 13, 2014, plaintiff filed his second amended complaint, which included his CPRA claim against the County. That

same day, June 13, 2014, the County appealed the trial court's decision to vacate the judgment. On June 1, 2015, we issued our unpublished opinion affirming the trial court's order to vacate judgment and to allow plaintiff to file his second amended complaint. (See *Saint-Fleur v. County of Fresno et al*. (June 1, 2015, F069764).)

Demurrer to Second Amended Complaint

On or about September 4, 2015, the County filed a demurrer challenging the second amended complaint. Consistent with the County's initial and ongoing position, the County's points and authorities in support of its demurrer argued plaintiff had no viable CPRA cause of action because section 6254, subdivision (c) exempts from the CPRA's disclosure obligations " 'personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.' " (Italics omitted.) The County also stated therein that "the only documents Plaintiff is alleging or could allege he was not provided are documents relating to the investigation of his billing practices, which for reasons set forth in this brief were and are not part of his alleged 'personnel file' in the first place, and are otherwise privileged or exempt from disclosure."

In plaintiff's opposition to the demurrer, he emphasized that in 2012, when plaintiff requested certain records pursuant to the CPRA, the County indicated there were records responsive to plaintiff's request, but those records were not going to be produced due to the asserted exemption. Plaintiff asserted that the County's "ongoing refusal" to provide the required records or a segregated portion thereof under the provisions of the CPRA formed the basis for plaintiff's second amended complaint. More specifically, plaintiff argued the demurrer should be overruled for the following reasons: "Defendants, citing section 6254, have asserted that Saint-Fleur cannot obtain 'personnel, medical, or similar files…' … However, Defendants cannot categorically deny access to a group of documents simply to prevent disclosure. [¶] Defendants, in response to Saint-Fleur's

[CPRA] request, produced a document that stated that '[a]pproximately $3,681.45 was refunded to Medi-Cal.' (SAC Exh. A.) Yet, no additional documents were produced relating to this refund. This violates section 6257 of the [CPRA] which provides: 'Any reasonably segregable portion of a record shall be provided … after deletion of the portions which are exempt by law.' … [T]he [CPRA] mandates that where nonexempt materials 'are reasonably segregable, segregation and disclosure of the nonexempt materials are required to satisfy the objectives of the act. [Citation.]' "

The hearing on the demurrer was October 14, 2015. The trial court's tentative ruling was to sustain the County's demurrer, without leave to amend, on the ground the exemption under section 6254, subdivision (c), precluded disclosure. At oral argument, the County argued through counsel that the tentative ruling was correct because the documents in the investigation records were properly withheld based on "the privacy exception." The County explained that to comply with plaintiff's CPRA request, any matters subject to right of privacy would be "redacted," and plaintiff would "get a black piece of paper." The County also argued that, in any event, plaintiff had already received or possessed all the records in the County's possession "through discovery in the federal case," including the personnel file and the investigation file.

Plaintiff's counsel responded at oral argument that the County has never been willing to represent in writing such as a declaration or letter specifying that "[w]e gave everything" sought by plaintiff's CPRA record requests. Further, plaintiff's counsel argued that the CPRA requests could not be disposed of on demurrer because "[t]here's no way for the Court to know whether or not the County has complied with the request at the demurrer stage." At the end of oral argument on the demurrer, the trial court requested the parties submit supplemental briefing.

The County's supplemental brief, filed in the trial court on November 12, 2015, continued to assert that the County could not produce as public records the documents

sought by plaintiff due to the statutory exemption from disclosure under section 6254, subdivision (c), regarding personnel or similar files, the disclosure of which would constitute an unwarranted invasion of privacy. Plaintiff's supplemental brief, filed October 28, 2015, again pointed out that the CPRA requires segregation of exempt from nonexempt material, with the nonexempt or redacted portion being subject to disclosure. Further, plaintiff argued the trial court had no way of knowing on demurrer whether the exemption would prohibit disclosure of all the requested records.

On December 21, 2015, after considering the supplemental briefing, the trial court sustained the demurrer to plaintiff's personnel file claim but overruled the demurrer to the separate CPRA cause of action. The trial court described the nature of plaintiff's CPRA cause of action as follows: "Plaintiff argues this was not a personnel or similar file, but involved a $3,681.45 Medi-Cal refund. He suggests that the segregable portion of the record must be provided and wants produced the public records relating to the investigation of a public employee, with the investigation culminating in the refund." In overruling the demurrer to the CPRA cause of action, the trial court explained: "Because the court here cannot determine as a matter of law that all parts of all of the records sought by plaintiff pursuant to the [CPRA] are exempt, the demurrer to the second cause of action is overruled."

The County was given leave to file an answer. In its answer or response to the CPRA cause of action, the County asserted as affirmative defenses that the records sought were exempt from disclosure and that it had fully satisfied any request for records before plaintiff's action was filed.

Request for In Camera Hearing

Pursuant to section 6259, where it appears by verified petition to the superior court "that certain public records are being improperly withheld from a member of the public," the trial court shall issue an order to show cause requiring the public agency or the person

charged with withholding the records to show cause why the public records should not be disclosed. (§ 6259, subd. (a).) "The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow." (§ 6259, subd. (a).) "If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content …." (§ 6259, subd. (b).)

On December 29, 2015, the County filed a request for the trial court to set expedited proceedings (i.e., issue an order to show cause or OSC) including, in the court's discretion, to conduct if necessary an in camera review pursuant to section 6259. There was apparently some disagreement between the parties about how the matter should proceed under section 6259. On January 29, 2016, the trial court ordered counsel to "meet and confer" prior to an upcoming status conference scheduled for February 24, 2016, concerning (i) a proposed date and time for the trial court's in camera review, and (ii) the terms of an OSC for the court to sign setting a date for such a hearing.

On February 5, 2016, in the course of engaging in the meet and confer process, Deputy County Counsel Scott Hawkins e-mailed plaintiff's counsel and stated that plaintiff should make sure he really understands the ramifications of what he is seeking by his CPRA request: "He is now suing to have all (not just some) of his otherwise private *personal* records, including his personnel files and records related to the investigation into his billing practices, made 'public!' [¶] Does he understand that pursuant to the provisions of the Act, if his wish came true and these records were to be officially deemed public records via this process (and right now you and I control that outcome), then every such record, in its un-redacted format, shall and will be made

available to any and every person, (i.e., prospective employer, current or former County employees, media outlet or any other 'member of the public') that asks to see them?" Hawkins's e-mail added that plaintiff's CPRA request did not make sense, since (according to Hawkins's e-mail) plaintiff "already possesses the records."

Based on the above, it appears the County's position on the matter as of February 5, 2016, was that it properly withheld the records based on the personnel file/privacy exemption, and that plaintiff needed to realize that if the documents were deemed public records and produced under the CPRA, then the investigation records would be available to any member of the public. Further, the County argued that plaintiff already possessed the records—presumably referring to the discovery responses in the district court case.

At the February 24, 2016, status hearing, the parties were still unable to agree on how to proceed. Therefore, the trial court directed the parties to file further briefing on the questions of whether an in camera hearing was required and, if so, how it should be conducted. The County's brief addressing those issues was filed on March 16, 2016. In that brief, the County argued that an in camera hearing was not needed after all, taking the position that the CPRA claims were frivolous because plaintiff already possessed the records through the County's 2010 discovery responses in the district court case (and the additional copy of the discovery responses that were dropped off by Deputy County Counsel Linden to plaintiff's counsel's office in January 2014). In summary, then, under the County's March 16, 2016 brief it appears that the main emphasis of the County's position on plaintiff's CPRA claims had begun to shift from the assertion of exemption to an argument that the CPRA claims were rendered moot or frivolous because plaintiff had previously received and possessed copies of the investigative and personnel records through other channels—i.e., the discovery responses provided in the district court lawsuit.

Plaintiff's brief to the trial court regarding the issue of in camera review was filed on the same day, March 16, 2016. In response to the County's claim of exemption, plaintiff continued to argue that segregable nonexempt portions of public records should be disclosed, and therefore an in camera examination was necessary to determine the extent to which any of the withheld records (or portions thereof) may be disclosed under the CPRA. As to the County's argument that plaintiff's possession of documents would somehow negate his CPRA claims, plaintiff's March 16, 2016 brief recited case authority for the principle that a person's current possession of documents does not defeat a CPRA claim. (See *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212, 219 [holding that public agency's claim of mootness because the plaintiff already had copies of the documents "completely misses the point" since the issue is not current possession but making the documents public through the CPRA process].) On the latter point, plaintiff stressed that, regardless of whether he may potentially be in possession of some or even all the documents as a result of the 2010 discovery responses in the district court case, the investigation file requested by plaintiff has never been disclosed or released to plaintiff by the County as a public record under the CPRA.

On April 14, 2016, after considering the additional briefing provided by counsel, the trial court ordered the County to "appear … on May 13, 2016 … and to show cause, if any it has, why it should not be ordered to produce records requested by plaintiff herein." The court's order directed the County to "produce" at said hearing on May 13, 2016, "for the court's *in camera* inspection all records pertaining to County's investigation into plaintiff's billing practices." The same order further announced that "[t]he court intends to conduct an *in camera* hearing in the presence of County's representative and its counsel and to thereafter order County to produce any records identified by plaintiff's request and which are not exempt."

The OSC/In Camera Hearing Takes Place

On May 13, 2016, at the OSC/in camera hearing, the County appeared with the entire investigation file but adopted a new position in the case. It informed the trial court that no in camera review of the documents would be necessary because, according to the County, the occasion on which the duplicate discovery records from the district court case were dropped off by Deputy County Counsel Linden to plaintiff's counsel's office in January 2014 constituted the County's official production of public records under the CPRA. Therefore, according to the County, it already fully complied with the CPRA back in January 2014. And since the records were already *publicly* disclosed for purposes of the CPRA, the County no longer objected based on the "personnel file" or privacy exemption it had previously asserted. The County stated it preferred not to produce the documents again out of concern for the impact that might have on a subsequent prevailing party determination, but when pressed by the trial court, the County was willing to re-release or produce again the same documents to plaintiff, but it requested an opportunity to first make some minor redactions, noting that in January 2014 it had inadvertently failed to redact sensitive information impacting the privacy of third parties (i.e., names of patients, minor's identities, social security numbers) that should have been redacted prior to a public disclosure.

At the May 13, 2016 hearing, based on County Counsel's representation to the court that (i) everything responsive to plaintiff's CPRA requests was contained in the stack of documents brought to court that day and (ii) the previously asserted personnel records exemption had been withdrawn, the trial court ordered from the bench said documents must be produced to plaintiff under the CPRA without the need for an in camera review. Once certain sensitive information was redacted by the County, the records would have to be publicly produced, but meanwhile, an unredacted set of

documents was to be temporarily lodged with the trial court, under seal, to verify that the County's redaction did not remove any responsive documents.

Plaintiff's counsel, Lovegren-Tipton, filed a posthearing declaration purporting to set the record straight after the County's unexpected change of position at the time of the May 13, 2016, OSC/in camera hearing. The declaration noted, in part, as follows: "In short, County Counsel's now-desperate position is that, in January, 2014, County Counsel released the records requested pursuant to the Public Records Act request. [¶] … This is the FIRST TIME in over four years that County Counsel has suggested that it released any records other than the two pages released in March of 2012 in response to Saint-Fleur's original Public Records Act request." The declaration then proceeded to highlight the history of the County's exemption claim and its refusal to produce the investigation files at or near the time of, and continuing long after, the 2014 discovery document delivery.

The Trial Court Orders Production of the Investigation Records

As noted, on May 13, 2016, the trial court ordered the County to produce the records responsive to plaintiff's CPRA claims as soon as certain redactions had been made by the County to protect third-party privacy. On May 26, 2016, after the redactions were made by the County, the trial court issued a minute order acknowledging that the County had at that time produced the records "pursuant to the Court's order of 5/13/16."

Plaintiff Moves for An Award of Attorney Fees under the CPRA

On September 26, 2016, plaintiff filed his motion for attorney fees and costs pursuant to section 6259, subdivision (d), of the CPRA. Plaintiff's motion sought "an order declaring Plaintiff the prevailing party and for an award of attorney's fees and costs as a result of the same." The motion reiterated the history of the County's ongoing refusal from 2012 to 2016 to provide responsive documents under the CPRA based on its claim of exemption for personnel files under section 6254, subdivision (c), and then the

abrupt "11th-hour" change of position (i.e., that the January 2014 delivery of past discovery responses from the district court case constituted the County's CPRA response) which came after the trial court had set a hearing for in camera review. The motion argued that plaintiff is the prevailing party under the standards applied by the case law.

On October 5, 2016, the County filed its opposition to plaintiff's motion for prevailing party determination and attorney fees. The County's opposition argued the January 2014 document drop-off was necessarily the County's CPRA public disclosure in response to plaintiff's record requests and, therefore, plaintiff could not have prevailed. Thus, at the time he filed his CPRA cause of action in June 2014, no public records were being withheld by the County. Consequently, under applicable case law defining the test for whether a party has prevailed under the CPRA, plaintiff did not prevail.

After hearing oral argument on October 19, 2016, the trial court took the matter under submission. On December 29, 2016, the trial court entered its order granting plaintiff's motion. The trial court concluded plaintiff was the prevailing party on the CPRA cause of action and was entitled to an award of attorney fees and costs under section 6259, subdivision (d). The trial court explained its ruling as follows: "The court finds plaintiff is the prevailing party herein. The essence of [the County's] argument in opposition is that it produced all the documents it was required to produce in connection with discovery in previous litigation between the same parties. The court rejects that argument because, until the hearing on the court's Order to Show Cause on May 13, 2016, [the County] maintained the position that some of the records were covered by the privilege applicable to personnel records. This is shown consistently through correspondence and other communications from defendant and its counsel and through defendant's counsel's communications with the court during this litigation. It was not until the May 13, 2016 hearing that plaintiff (and the court) knew that all of the records required by plaintiff's request had been produced. Thus, the court finds the lawsuit

motivated [the County] to modify its behavior and was demonstrably influential in setting in motion the process which achieved the desired result."

The County timely filed a notice of appeal from the trial court's order determining that plaintiff was the prevailing party.

DISCUSSION

I. Overview of CPRA

The CPRA grants access to public records held by state and local government agencies. (*Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 290 (*Los Angeles County*).) The law was enacted "for the purpose of increasing freedom of information by giving members of the public access to information in the possession of public agencies." (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 425.) Section 6250 states the basic legislative policy as follows: "[A]ccess to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 6250.) Consistent with this legislative policy, the CPRA "broadly defines 'public records' to include 'any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.' (§ 6252, subd. (e).)" (*Los Angeles County*, *supra*, 2 Cal.5th at p. 290.) Moreover, the right of access to public records has also been enshrined in the state Constitution due to a 2004 voter initiative. (*Los Angeles County*, at p. 290.) "As amended by the initiative, the Constitution also directs that statutes 'shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.' " (*Id*. at pp. 290–291, quoting Cal. Const., art. I, § 3, subd. (b)(2).)

Section 6253 of the CPRA includes a summary of the public's access right and the corresponding duties of the public agency. Subdivision (a) of section 6253 provides that "[p]ublic records are open to inspection at all times during the office hours of the state or

local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law." Subdivision (b) of the same section states: "Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication …." (§ 6253, subd. (b).) Subdivision (c) of section 6253 clarifies the nature of the response required by the agency: "Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor." Section 6255 mandates that whenever an agency's response to a written request for public records includes a determination by the agency that the request is denied, in whole or in part, the response "shall be in writing." (§ 6255, subd. (b).) The agency "shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (§ 6255, subd. (a).)

The CPRA sets forth exemptions to disclosure of certain records. Section 6254 lists certain categories of documents as exempt, and the exemptions in that section are largely concerned with protecting the privacy of persons whose data or documents have come into governmental possession and/or protecting records privileged under the Evidence Code or pursuant to federal or state law (e.g., attorney-client privilege). (*Los*

Angeles County, *supra*, 2 Cal.5th at p. 291.)[3] The specific exemption claimed by the County in the present case was that of section 6254, subdivision (c), which exempts "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

The CPRA contains procedures to challenge a public agency's response to a records request. (*Sukumar v. City of San Diego* (2017) 14 Cal.App.5th 451, 463.) Section 6258 provides: "Any person may institute proceedings for injunctive or declaratory relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record" under the CPRA. (§ 6258.) If the court finds that the public official's refusal to disclose is not justified under section 6254 or 6255, the court "shall order the public official to make the record public." (§ 6259, subd. (b).)

II. The Prevailing Party Standard in CPRA Litigation

The CPRA provides for an award of costs and attorney fees to a prevailing plaintiff. Specifically, section 6259, subdivision (d), states: "The court shall award court costs and reasonable attorney's fees to the requester should the requester prevail in litigation filed pursuant to this section."[4] (§ 6259, subd. (d).) An award of costs and attorney fees pursuant to this provision is mandatory if the plaintiff prevails. (*Filarsky v. Superior Court*, *supra*, 28 Cal.4th 419, 427.)

A plaintiff prevails within the meaning of section 6259, subdivision (d), when he or she files an action which results in the defendant releasing a copy of a previously

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[3] An agency is deemed to waive grounds for claiming an exemption once it publicly discloses the public records to any member of the public. (§ 6254.5.) In certain circumstances, waiver does not apply, such as disclosures "[m]ade through other legal proceedings or as otherwise required by law." (§ 6254.5, subd. (b).)

[4] Recent amendment to subdivision (d) of section 6259 substituted the term "requester" for "plaintiff," but is otherwise unchanged. (Stats. 2018, ch. 463, § 1, eff. Jan. 1, 2019.)

withheld document. (*Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1085 (*Galbiso*); *Los Angeles Times v. Alameda Corridor Transportation Auth*ority (2001) 88 Cal.App.4th 1381, 1391 (*Los Angeles Times*); *Belth v. Garamendi* (1991) 232 Cal.App.3d 896, 898 (*Belth*).) An action results in the release of previously withheld documents if the lawsuit motivated the public agency to produce the documents. (*Galbiso*, *supra*, 167 Cal.App.4th at p. 1085; *Belth*, *supra*, 232 Cal.App.3d at pp. 898, 901–902; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 482.) Even if a plaintiff succeeds in obtaining only partial relief, he or she is still entitled to attorney fees unless the results obtained were "so minimal or insignificant as to justify a finding that the plaintiff did not [in fact] prevail." (*Los Angeles Times*, *supra*, 88 Cal.App.4th at pp. 1391–1392.)

The question of whether a plaintiff's lawsuit caused or motivated the production of public records is "intensely factual and pragmatic." (*Pasadena Police Officers Assn. v. City of Pasadena* (2018) 22 Cal.App.5th 147, 167.) Even in the absence of an order or judgment to provide the withheld documents (such as where a settlement occurs), "[a] defendant's voluntary action in providing public records that is induced by the plaintiff's lawsuit will still support an attorney fee award on the rationale that the lawsuit ' "spurred defendant to act or was a catalyst speeding defendant's response." ' " (*Id*. at p. 168.) The critical fact is the impact of the action, not the manner of its resolution. (*Belth, supra*, 232 Cal.App.3d at p. 901.) "A plaintiff is considered the prevailing party if his lawsuit motivated defendants to provide the primary relief sought or activated them to modify their behavior [citation], or if the litigation substantially contributed to or was demonstrably influential in setting in motion the process which eventually achieved the desired result [citation]." (*Id.* at pp. 901–902.)

However, a CPRA plaintiff "does not qualify as a prevailing party merely because the defendant disclosed records sometime after the [CPRA] action was filed. There must

be more than a mere temporal connection between the filing of litigation to compel production of records under the [CPRA] and the production of those records. The litigation must have been the motivating factor for the production of documents. [Citations.] The key is whether there is a substantial causal relationship between the lawsuit and the delivery of the information." (*Sukumar v. City of San Diego, supra,* 14 Cal.App.5th at p. 464.)

III. Standard of Review

A trial court's ruling on the issue of whether a plaintiff is a prevailing party under section 6259, subdivision (d), is a factual determination reviewed on appeal under the substantial evidence standard. (*Galbiso, supra,* 167 Cal.App.4th at p. 1085; *Motorola Communication & Electronics, Inc. v. Department of General Services* (1997) 55 Cal.App.4th 1340, 1351.) We accept the trial court's resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences that may be drawn from the evidence. (*Sukumar v. City of San Diego, supra,* 14 Cal.App.5th at p. 464.) Recognizing that the question of whether a plaintiff's CPRA lawsuit caused the production of public records is intensely factual and pragmatic, we will defer to the trial court's determination on this issue unless there is no substantial evidence to support the trial court's factual conclusion. (*Pasadena Police Officers Assn. v. City of Pasadena, supra,* 22 Cal.App.5th at p. 167.)

IV. Substantial Evidence Supported the Prevailing Party Determination

In finding that plaintiff was the prevailing party in his CPRA claim, the trial court rejected the County's argument that its delivery of the discovery documents originally served in connection with the prior district court litigation constituted compliance with the CPRA. The trial court explained: "The court rejects that argument because, until the hearing on the court's Order to Show Cause on May 13, 2016, defendant maintained the position that some of the records were covered by the privilege applicable to personnel

records." The trial court further stated: "It was not until the May 13, 2016 hearing that plaintiff (and the court) knew that all of the records required by plaintiff's request had been produced. Thus, the court finds the lawsuit motivated [the County] to modify its behavior and was demonstrably influential in setting in motion the process which achieved the desired result."

We conclude the trial court's finding that plaintiff was the prevailing party under the CPRA is supported by substantial evidence. The history of the parties' dispute shows the County moved from resistance to public disclosure based on a claim of exemption to a willingness to disclose the entire investigation file. As summarized below, the CPRA litigation filed by plaintiff appeared to have substantially motivated this change of position.

In the County's 2012 written responses to plaintiff's record requests, the County informed plaintiff it would not release a substantial portion of the investigative records due to the exemption relating to personnel files set forth in section 6254, subdivision (c). As our prior synopsis of the history of this case reflects (see above), from that point forward, until 2016, the County continued to assert substantially the same exemption position. For example, in February 2014, a mere two weeks after the discovery records from the prior district court case had been dropped off or re-delivered to plaintiff's counsel, the County opposed plaintiff's motion to vacate judgment on the ground that plaintiff's proposed CPRA claim was not viable based on the exemption for personnel records. Further, the County's exemption position continued unabated in its demurrer filed on September 4, 2015. Afterwards, to one degree or another, the County continued to assert the personnel file exemption with respect to plaintiff's CPRA cause of action into 2016.

After the demurrer was overruled, and especially once it became reasonably apparent that an in camera hearing would likely proceed, the record fairly reflects that the

County began to move away from its exemption position. This change of position came in stages. Initially, the County emphasized the argument that plaintiff's *possession* of the district court case discovery documents, copies of which were re-delivered or "provided" to plaintiff's counsel in January 2014, allegedly rendered plaintiff's CPRA claim frivolous or moot because said discovery documents purportedly contained the records found in the County's investigation and personnel files. However, plaintiff's March 16, 2016, brief pointed out there was case authority for the proposition that a plaintiff's possession of records does not necessarily defeat a valid CPRA claim (i.e., *Caldecott v. Superior Court*, *supra*, 243 Cal.App.4th 212, 219 [holding that school district's position the plaintiff already possessed the requested documents "completely misses the point," since the issue is the *public* promulgation of the records]). Thereafter, at the May 13, 2016 hearing, which was the time set by the trial court for an in camera review, the County claimed for the first time that when Deputy County Counsel Linden dropped off or re-delivered the discovery documents in 2014, that action actually constituted the County's official public records disclosure and demonstrated its full compliance with the CPRA. Moreover, in connection with its new position, the County completely withdrew its claim of exemption.

Considering the relief obtained by plaintiff in light of the above record, we believe substantial evidence supports the trial court's pragmatic factual conclusion that plaintiff was the prevailing party. From the time of plaintiff's 2012 record requests through the filing of his CPRA complaint in June 2014, and then continuing afterwards for nearly two additional years, the County, through its communications to plaintiff's counsel and briefs filed in the trial court, steadfastly maintained its position that it was withholding documents from public disclosure or denying the release of public records based on an exemption. In the end, the County withdrew its exemption claim, and the trial court ordered it to produce the public records at issue. Pragmatically speaking, that outcome

constituted a victory for plaintiff. Documents the County represented to have been withheld as exempt were ordered to be made public and disclosed. Plaintiff got the relief he sought, and a reasonable inference exists that this relief resulted from or was caused by plaintiff's CPRA lawsuit. The fact that, in the end, the County was being ordered to reproduce, as public records under the CPRA, records that may have been coextensive with the discovery documents from the district court case previously delivered to plaintiff's counsel does not convince us, under the unique circumstances presented, that plaintiff did not prevail.

DISPOSITION

The order of the trial court is affirmed. Costs on appeal are awarded to plaintiff.

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LEVY, Acting P.J.

WE CONCUR:

_____
DETJEN, J.

_____
FRANSON, J.